

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
AGENCE FRANCE PRESSE,	:	
Plaintiff,	:	
	:	
-v.-	:	10-CV-2730 (AJN) (FM)
	:	
DANIEL MOREL,	:	ECF CASE
Defendant,	:	
	:	
-v.-	:	<u>PROPOSED JOINT</u>
	:	<u>PRETRIAL REPORT</u>
	:	
GETTY IMAGES, INC., ET AL.,	:	
Counterclaim	:	
Defendants	:	
	:	
-----	X	

Defendant and Counterclaim Plaintiff Daniel Morel (“Morel”), Plaintiff/Counterclaim Defendant Agence France Presse (“AFP”), and Counterclaim Defendant Getty Images (US), Inc. (“Getty Images”) hereby jointly set forth various matters concerning the issues, documents and witnesses to be presented at trial of this matter before the Honorable Alison J. Nathan:

I. Full Caption of the Action

The full caption of the action, 10 Civ. 2730 (AJN)(FM), is set forth above.

II. Trial Counsel

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III. Subject Matter Jurisdiction

The parties agree that the Court has subject matter jurisdiction in this action.

IV. Summary of Claims and Defenses to Be Tried

Attached hereto as Exhibit A is a summary of the claims and defenses to be tried in this action, prepared in accordance with the Court's Individual Practices in Civil Cases, Rule 5.A.iv.

V. Jury Trial

Mr. Morel has demanded a jury trial of all issues, and AFP and Getty Images accept Mr. Morel's demand for a jury trial. Trial in this matter is expected to take 4-6 days. The parties have not consented to trial of the case by a magistrate judge. The parties do not consent to less than a unanimous verdict.

VI. Stipulations

Attached hereto as Exhibit B is a list of statements of fact and law that the parties agree are true and correct, and that the Court may consider conclusively established, without further proof, for the purposes of this action only.

VII. Witnesses

Attached as Exhibits C and D are the parties' respective lists of trial witnesses, prepared in accordance with the Court's Individual Practices in Civil Cases, Rule 5.A.viii.

VIII. Deposition Testimony

Attached hereto as Exhibit E and F are charts containing designations by each party of deposition testimony to be offered in its case in chief and any counter-designations and objections by any opposing party, prepared in accordance with the Court's Individual Practices in Civil Cases, Rule 5.A.ix.

IX. Exhibit Lists

Exhibits G and H, attached hereto, constitute, respectively, the lists of exhibits that Mr. Morel and Counterclaim Defendants expect to offer in their cases-in-chief and objections by any opposing party, prepared in accordance with the Court's Individual Practices in Civil Cases, Rule 5.A.x.

X. Damages

Mr. Morel submits the following statement of damages claimed and other relief sought in accordance with the Court's Individual Practices in Civil Cases, Rule 5.A.xi.:

- A. Damages sought by Mr. Morel against Counterclaim Defendants AFP and Getty Images under the Copyright Act for willful copyright infringement, willful contributory copyright infringement and willful vicarious copyright infringement:

1. Actual damages in an amount to be determined by the jury; or

2. Statutory damages in the amount of \$150,000 per work infringed (\$1,200,000 in total), jointly and severally.
- B. Damages sought by Mr. Morel against Counterclaim Defendants AFP and Getty Images under § 1203(c) of the DMCA for violations of DMCA § 1202(a) – False Copyright Management Information:
1. Actual damages in an amount to be determined by the jury; or
 2. Statutory Damages in the amount of \$25,000 per violation, for up to 527 violations (up to \$13,175,000 in total), to be determined by the jury.
- C. Damages sought by Mr. Morel against Counterclaim Defendants AFP and Getty Images under § 1203(c) of the DMCA for violations of DMCA § 1202(b) – Removal Or Alteration Of Copyright Management Information:
1. Actual damages in an amount to be determined by the jury; or
 2. Statutory Damages in the amount of \$25,000 per violation, for up to 527 violations (up to \$13,175,000 in total), to be determined by the jury.
- D. Attorneys’ Fees and litigation expenses, in an amount to be determined, pursuant to 17 U.S.C. § 505 and 17 U.S.C. 1203(b)(4) and (5).

Counterclaim Defendants reserve the right to seek prevailing party attorney’s fees and litigation expenses, in an amount to be determined, pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203(b)(4) and (5) and/or as a consequence of a rejected offer of judgment.

XI. Joint and Competing Requests to Charge

Attached as Exhibit I are the parties’ joint and competing requests to charge, prepared in accordance with the Court’s Individual Practices in Civil Cases, Rule 5D.

XII. Joint and Competing Proposed *Voir Dire* Questions

Attached as Exhibit J are the parties' joint and competing proposed *voir dire* questions, prepared in accordance with the Court's Individual Practices in Civil Cases, Rule 5D.

XIII. Proposed Verdict Forms

The parties were unable to agree to a joint proposed verdict form. Attached as Exhibits K and L are the parties' respective proposed verdict forms, prepared in accordance with the Court's Individual Practices in Civil Cases, Rule 5D.

Dated: New York, New York
September 20, 2013

AGREED:

/s/ _____
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